

## **Assembly Bill No. 2009**

### **CHAPTER 334**

An act to amend Sections 21660, 21661, 21662, and 21663 of, to amend the heading of Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of, and to add Section 21663.1 to, the Business and Professions Code, relating to swap meets, flea markets, and open-air markets.

[Approved by Governor August 31, 2002. Filed with  
Secretary of State September 3, 2002.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2009, Nakano. Swap meets, flea markets, and open-air markets.

Existing law regulates the operation of swap meets, defined to include flea markets, indoor swap meets, and outdoor swap meets or flea markets, where merchandise is offered for sale and exchange. Existing law requires a vendor to report all personal property offered or displayed for sale or exchange at a swap meet on a form approved by the California Department of Justice, unless the personal property is new. Existing law requires the completed report to be submitted to the chief of police or the sheriff depending on the location of the swap meet. Under existing law, a violation of the provisions regulating these events is punishable as a misdemeanor offense.

This bill would instead specify that all merchandise offered for sale or exchange by a vendor at a swap meet, flea market, or open-air market be reported unless the merchandise is new.

Because a violation of the provisions regulating swap meets is punishable as a misdemeanor offense, to the extent the bill would make additional events subject to this sanction, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. The heading of Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code is amended to read:

Article 6. Swap Meets, Flea Markets, and Open-Air Markets

SEC. 2. Section 21660 of the Business and Professions Code is amended to read:

21660. It is the intent of the Legislature in enacting this article to require the reporting of personal property exchanged, sold, or offered for sale or exchange at swap meets, flea markets, and open-air markets, and information regarding vendors selling or displaying new merchandise, for the purpose of ensuring that swap meet, open-air market, and flea market operators and vendors are in complete compliance with all state laws and regulations applicable to displaying, offering for sale, selling, and exchanging new and previously owned merchandise.

This article shall apply to operators and vendors at swap meets, flea markets, and open-air markets unless the merchandise or the transaction is specifically exempt under this article and shall not be superseded or supplanted by any provisions or ordinances or charters of any city, county, or city and county, nor supplemented by any local ordinances or charters or provisions. Nothing contained in this article shall be deemed to affect the land use and zoning regulatory power of a local agency, nor be construed to require any local agency to permit swap meets, flea markets, or open-air markets if local land use or zoning regulations prohibit those operations.

Any transaction that is regulated by this article shall not be subject to the provisions of Article 4 (commencing with Section 21625), regulating transactions in identifiable secondhand tangible personal property. No person, partnership, or corporation shall be considered a “secondhand dealer” within the meaning of Section 21626 because of activities regulated by this article.

Article 5 (commencing with Section 21650) of this chapter shall not apply to operators or vendors at swap meets, flea markets, or open-air markets.

SEC. 3. Section 21661 of the Business and Professions Code is amended to read:

21661. (a) As used in this article, the term “swap meet” includes a flea market or an open-air market and means an event at which two or more persons offer merchandise for sale or exchange and that meets one of the following conditions:



(1) A fee is charged for the privilege of offering or displaying merchandise for sale or exchange.

(2) A fee is charged to prospective buyers for parking or for admission to the area where merchandise is offered or displayed for sale or exchange.

(3) The event is held more than six times in any 12-month period.

(b) Notwithstanding subdivision (a), the term “swap meet,” as used in this article, includes a flea market or an open-air market and means an event, regardless of the number of persons offering or displaying personal property or the absence of fees, at which used personal property is offered or displayed for sale or exchange if the event is held more than six times in any 12-month period.

(c) The term “swap meet,” as used in this article, is interchangeable and applicable to “flea markets,” “indoor swap meets,” “open-air markets,” or other similar terms, regardless of whether these events are held either inside a building or outside in the open. The primary characteristic is that these activities involve a series of sales sufficient in number, scope, and character to constitute a regular course of business.

(d) “Operator,” as used in this article, means any person, partnership, organization or corporation that controls, manages, conducts or otherwise administers a swap meet.

(e) “Vendor,” as used in this article, means any person, partnership, organization or corporation who exchanges, sells, or offers for sale or exchange any merchandise at a swap meet. A swap meet vendor shall be classified according to the following categories:

(1) A “casual swap meet vendor” means a vendor who participates in a swap meet two times or less per year.

(2) A “regular swap meet vendor” means a vendor who participates in a swap meet three or more times per year.

SEC. 4. Section 21662 of the Business and Professions Code is amended to read:

21662. The provisions of this article shall not apply to:

(a) An event held not more than two times per calendar year that is organized for the exclusive benefit of any community chest, fund, foundation, association, or corporation organized and operated for religious, educational, hospital, or charitable purposes, if no part of any admission fee or parking fee charged vendors or prospective purchasers, or the gross receipts or net earnings from the sale or exchange of merchandise, whether in the form of a percentage of the receipts or earnings, as salary, or otherwise, inures to the benefit of any private shareholder or person participating in the organization or conduct of the event.



(b) An event at which all of the merchandise offered or displayed is new, and all persons selling, exchanging, offering, or displaying merchandise for sale or exchange are manufacturers or licensed retail or wholesale merchants.

(c) Any vehicle or trailer or any vehicle accessory or vehicle part usable for a motor vehicle eligible for vehicle registration under Section 5004 of the Vehicle Code, and items of memorabilia or history, or both, relating to these vehicles.

SEC. 5. Section 21663 of the Business and Professions Code is amended to read:

21663. (a) Except as provided in Section 21663.1, every vendor shall report all merchandise offered or displayed for sale or exchange on a form, prescribed or approved by the California Department of Justice, containing all the following information:

- (1) The name and address of the vendor.
- (2) A description of the merchandise offered for sale or exchange, including serial numbers and personal identification marks, or if there is no serial number, other identification marks or symbols, if any, or a general description of the item.
- (3) A certification by the vendor that to his or her knowledge and belief, the information contained on the form is true.
- (4) The make, year, color, state of registration, and license number of the vehicle or vehicles in which the merchandise is transported to the swap meet.
- (5) The California seller's permit number (State Board of Equalization sales tax number), if any, of the vendor.
- (6) The vendor's motor vehicle driver's license number and its state of issuance or California identification card numbers.
- (7) If the vendor is an agent of an individual, company, partnership or corporation, the name and business address of the principal.
- (8) The dates of sale for which the report is made.
- (9) A receipt number given by the operator for the dates of the sale or the space used by the vendor.
- (10) A requirement that the vendor check an appropriate box that sets forth his or her permit number for sales tax purposes.

If the vendor's permit number is not listed in the appropriate place on the form, the vendor shall indicate that he or she has not and does not contemplate making more than two sales of sufficient size, scope, and character within a 12-month period to require a permit.

(b) In addition to the official governmental form, consisting of an original and at least two copies, the information required may be recorded on a computerized or other similar record that contains the same information required by subdivision (a).



(c) In no case shall a swap meet owner or operator be liable or responsible for the accuracy of, or any discrepancy in, any information submitted by the vendors on the forms provided to them by the swap meet owners or operators.

SEC. 6. Section 21663.1 is added to the Business and Professions Code, to read:

21663.1. (a) A vendor selling or displaying new merchandise and a vendor holding a business license issued by a city, county, or city and county of this state are not required to comply with Section 21633 if the swap meet is conducted at the same location at least once per month on real property owned by the operator or leased to the operator for a period of not less than one year.

(b) A vendor meeting the conditions of subdivision (a) shall, at a minimum, provide the operator with the following information prior to offering or displaying merchandise for sale at the event:

(1) The name and address of the vendor.

(2) The vendor's California seller's permit number (State Board of Equalization sales tax number).

(3) The vendor's motor vehicle driver's license number and its state of issuance or his or her California identification card number.

(4) The vendor's business license number and its city or county of issuance, unless the vendor is operating under a business license issued to the operator.

(c) The operator shall maintain the information required by this section in written or electronic form for six months after the date of its receipt and shall make copies of the information available for inspection, upon request, to any peace officer or any authorized representative of the Board of Equalization or Department of Justice.

(d) In no case shall the operator be liable for the accuracy of, or any discrepancy in, any information submitted by a vendor.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

